

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and)	
NCR CORPORATION,)	
)	No. 08-CV-00016-WCG
Plaintiffs,)	
)	
v.)	
)	
GEORGE A. WHITING PAPER)	
COMPANY, et al.,)	
)	
Defendants.)	

**MENASHA CORPORATION’S RESPONSE TO APPLETON PAPERS, INC. AND
NCR CORPORATION’S MOTION FOR SUMMARY JUDGMENT
ON CERTAIN DEFENDANTS’ STATE COMMON LAW COUNTERCLAIMS**

Defendant Menasha Corporation (“Menasha”) opposes Appleton Papers, Inc. (“API”) and NCR Corporation’s (“NCR”) motion for three reasons as more fully discussed below.

First, for the reasons stated in CBC Coatings, Inc.’s (“CBC”) memorandum of law (Dkt. 1416), state law claims related to OUs 2-5 are not preempted by CERCLA. Menasha hereby adopts and incorporates all of CBC’s memorandum of law, except for the first sentence of the Introduction (Dkt. 1416 at 1).

Second, for the reasons stated in P.H. Glatfelter Company (“Glatfelter”) and WTM I Company’s (“WTM”) memorandum of law (Dkt. 1413), state law claims are not preempted as to OU 1 as a result of the Court’s decision that NCR is not an arranger. Menasha hereby adopts and incorporates by reference the following parts of Glatfelter and WTM’s memorandum of law: Sections I through IV.B. (Dkt. 1413 at 1 to 17)¹ and Section V. (Dkt. 1413 at 21).

¹ Sections IV.C. and IV.D. discuss issues not pertinent to Menasha’s claims against NCR and API.

Third, API, Menasha and NCR entered into a stipulation that was reduced to an order that states:

For as *long as the Court's order granting declaratory relief to Menasha is effective*, Menasha shall not seek to recover from Plaintiffs the response costs it has paid relating to the Fox River, including the \$7 million Menasha paid for the remediation of OU 1, *through the date this Order is entered* ("Past Costs"). This Order will not be effective if the Court's order granting declaratory relief to Menasha is reversed or modified so as to become ineffective.

Dkt. 1135 at 3 (emphasis added). The purpose of this order was to avoid disputes about Menasha's insurance recoveries related to the CERCLA claims. This order does not apply to Menasha's state law claims, which were stayed pending the outcome of the appeal, until API and NCR forced the issue in the pending motion.

For these reasons, Menasha respectfully requests that the motion be denied.

Dated: August 2, 2012

HUNSUCKER GOODSTEIN & NELSON PC

By: /s/ Philip C. Hunsucker
Attorneys for Defendant Menasha Corporation

Philip C. Hunsucker (CA State Bar 135860)
David A. Rabbino (CA State Bar 182291)
Allison E. McAdam (CA State Bar 226836)
Marc A. Shapp (CA State Bar 266805 and PA State Bar 204305)

HUNSUCKER GOODSTEIN & NELSON PC

3717 Mt. Diablo Blvd., Suite 200

Lafayette, CA 94549

Ph: (925) 284-0840

Fax: (925) 284-0870

phunsucker@hgnlaw.com

drabbino@hgnlaw.com

amcadam@hgnlaw.com

mshapp@hgnlaw.com

Anne E. Lynch (DC State Bar 976226 and VA State Bar 73430)

HUNSUCKER GOODSTEIN & NELSON PC

5335 Wisconsin Avenue, NW, Suite 360

Washington, DC 20015

Ph: (202) 895-5380

Fax: (202) 895-5390

alynch@hgnlaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and)	
NCR CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	No. 08-CV-00016-WCG
)	
GEORGE A. WHITING PAPER)	
COMPANY, et al.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2012, I electronically filed the following document:

**MENASHA CORPORATION'S RESPONSE TO APPLETON PAPERS, INC.
AND NCR CORPORATION'S MOTION FOR SUMMARY JUDGMENT
ON CERTAIN DEFENDANTS' STATE COMMON LAW COUNTERCLAIMS**

with the Clerk of the Court using the Electronic Court Filing System and is available for viewing and downloading.

Dated: August 2, 2012

HUNSUCKER GOODSTEIN & NELSON PC

By: /s/ Philip C. Hunsucker
Attorneys for Defendant
Menasha Corporation
Philip C. Hunsucker (CA State Bar 135860)
David A. Rabbino (CA State Bar 182291)

HUNSUCKER GOODSTEIN & NELSON PC
3717 Mt. Diablo Blvd.
Suite 200
Lafayette, CA 94549
Ph: (925) 284-0840
Fax: (925) 284-0870
phunsucker@hgnlaw.com
drabbino@hgnlaw.com